

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: K & D FEEDYARDS LLC FACILITY #60404 SIOUX COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO- 15
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TO: Kirk Hulstein, Registered Agent
K & D Feedyards LLC
1275 7th Ave. NE
Sioux Center, IA 51250

I. SUMMARY

This Administrative Consent Order (Order) is entered into between K & D Feedyards LLC and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations and manure control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Sheila Kenny
IDNR Field Office #3
1900 N. Grand, Suite E17
Spencer, IA 51301
Ph: (712) 262-4177
Fax: (712) 262-2901

Relating to legal requirements:

Randy Clark, Attorney II
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: (515) 281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Attn: Randy Clark

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II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, Iowa Code Chapter 459, Subchapter III, Iowa Code Chapter 459A, or Iowa Code Chapter 459B and the rules adopted or permits issued pursuant thereto; and Iowa Code §455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. K & D Feedyards LLC (K & D Feedyards) owns and operates a beef cattle confinement and open feedlot operation located in the SW¼ of Section 36, T96N, R46W (Plato Township), Sioux County, Iowa. The operation maintains a maximum of 9,000 head of cattle in open feedlots and 5,000 head of cattle in confinement buildings pursuant to National Pollutant Discharge Elimination System (NPDES) Permit No. 8460404 (Permit), issued on June 3, 2011. Manure control facilities for the open feedlot include four solids settling structures that discharge via underground piping to an earthen settled open feedlot effluent basin. While a small portion of the manure generated in the confinement operation is stored in 4-5 storage bays in each of two confinement buildings, most of the manure is stockpiled with open feedlot manure until it is sold.

2. On May 30, 2013, Department Field Office #3 (FO3) staff visited the K & D Feedyards operation and discovered an ongoing discharge from a stockpile of confinement and open feedlot manure located on the east side of the confinement buildings, outside the operation's containment area. The manure laden runoff was flowing southwest in the east-west road ditch at the south edge of the operation, through a culvert under 390th Street and into a grass waterway, and finally into an unnamed Six Mile Creek tributary. Both the manure laden runoff and the liquid in the tributary at the discharge point were dark brown in color. No fish, dead or alive, were observed in the tributary. Laboratory analyses of samples collected from the runoff at the stockpile revealed 300 mg/L for ammonia as N, 470 mg/L for suspended solids and 520,000 for E.coli bacteria.

3. While at the K & D Feedyards operation on May 30, 2013, FO3 staff spoke with facility manager, Jeremy Jansen. Mr. Jansen stated that heavy rainfall on May 26-27 had washed out the two foot high berms, constructed of dry bedded manure and dirt, intended to contain runoff from the new stockpile area east of the confinement buildings. While corn stalk bales were placed on the west and south sides of the stockpile area on the morning of May 26, 2013, in an effort to stop the discharge Mr. Jansen stated the area continued to seep. He stated the operation planned to retain the stockpile until the manure could be land-applied in the fall, and that an engineer was designing permanent runoff controls for the area. Mr. Jansen further stated that the heavy rainfall also cut a channel through the grass waterway that had been seeded earlier that spring. FO3 staff directed Mr. Jansen to prevent further discharge and to clean up the affected area as soon as possible.

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4. Official precipitation records for Sioux Center, Iowa show the following for 24 hour periods ending at 4:00 p.m.: May 26, 2013, 3.5"; May 27, 2013, 4.6"; May 28, 2013, 0.06"; May 29, 2013, none; May 30, 2013, 0.58".

5. By letter dated October 30, 2013, FO3 notified K & D Feedyards that the ongoing discharge from the uncontrolled manure stockpile observed on May 30, 2013, violated Iowa law and that the matter would be referred to the Department's Legal Services Bureau for enforcement action.

6. FO3 staff revisited the K & D Feedyards operation on March 12, 2014, and observed a very small berm again in place along the south side of the stockpile on the east side of the confinement buildings. The berm did not have vegetation for stabilization, wheel tracks indicated it had been driven over, and FO3 staff concluded it is highly unlikely that the berm would contain the 25-year, 24-hour rainfall event. It did not appear runoff from this area was routed into the settled open feedlot effluent basin. To date, FO3 has not received sufficient information from K & D Feedyards or its engineer regarding permanent runoff controls for the stockpile area.

IV. CONCLUSIONS OF LAW

1. Iowa Code §459.103 requires the Environmental Protection Commission (Commission) to adopt rules related to animal feeding operations. The Commission has done so at 567 IAC Chapter 65.

2. Iowa Code §459.311(1) and 567 IAC 65.2(3) require that each confinement feeding operation retain all manure produced in the confinement enclosures between periods of manure application. A confinement feeding operation is prohibited from discharging manure directly into water of the state or into a tile line that discharges directly into water of the state. Pursuant to Iowa Code §459B.305 and §459B.306, a dry bedded confinement feeding operation may retain dry bedded manure by stockpiling but it must comply with applicable NPDES requirements. To the extent K & D Feedyards did not comply with the Permit (see paragraph 3, below), the foregoing facts document a violation of these provisions.

3. Iowa Code §459A.401(2) and 567 IAC 65.101(2) describe the minimum level of manure control for a cattle open feedlot operation which has obtained an NPDES permit and prohibits discharges resulting from precipitation events less than or equal to the 25-year, 24-hour precipitation event. Similarly, the Permit authorizes discharge only when precipitation events greater than the 25-year, 24-hour rainfall event (5.0 inches), as measured at Sioux Center, Iowa, cause an overflow of the production area that is designed, constructed and operated to comply with 567 IAC Chapter 65, Appendix A, Open Feedlot Control System 1. Not only did the precipitation events not equal or exceed the 25-year, 24-hour precipitation event threshold, but

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the manure stockpile area was not designed, constructed and operated to meet this standard. Therefore, the foregoing facts indicate violation of one or more of these criteria.

4. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Inasmuch as K & D Feedyards did not comply with the Permit, the foregoing facts establish that this provision has been violated.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above facts disclose violation of one or more of these criteria.

6. 567 IAC 65.2(9) and 65.101(9) require any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts establish that this provision was violated.

V. ORDER

THEREFORE, the Department hereby orders and K & D Feedyards consents to do the following:

1. Comply with all manure control requirements.
2. Within 90 days of receipt of this Order, submit to FO3 documentation by a professional engineer licensed in Iowa that runoff control structures designed to satisfy the discharge requirements in the Permit have been installed in the stockpile area.
3. Pay an administrative penalty of \$9,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code §§455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws.

2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to these provisions the Department has determined that the most effective and

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efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty is determined as follows:

a. Economic Benefit. 567 IAC Chapter 10 requires the Department to consider the cost saved or likely to be saved by noncompliance. Specifically, 567 IAC 10.2(1) provides, "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit...reasonable estimates of economic benefit should be made where clear data are not available." K & D Feedyards benefited by proceeding with stockpiling in an area not yet protected with runoff control measures. While this benefit cannot be precisely determined, it is estimated to be at least \$1,000.00 and that amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. This matter involves actual harm to the environment due to violation of general water quality standards. Multiple rule and statutory provisions were violated: failure to retain manure; discharge to water of the state; failure to provide notification of a release, and violation of water quality standards. For these reasons, \$3,000.00 per day could be assessed for this factor for each of the four above-cited violations. However, in view of the Culpability factor, below, \$5,000.00 is assessed for this factor.

c. Culpability. This matter appears to involve negligent rather than intentional acts. However, due to the possession of an NPDES permit, K & D Feedyards should have been fully aware of manure control requirements. For these reasons, \$750.00 is assessed for each of the four above-cited violations, for a total of \$3,000.00 for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly by and with the consent of K & D Feedyards. By signature to this Order, all rights to appeal this Order or any part thereof are waived by K & D Feedyards.

VIII. NONCOMPLIANCE

Compliance with section V. ORDER of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1st day of

July, 2014.



KELLY HULSTEIN for
K & D FEEDYARDS LLC

Dated this June 23 day of

June, 2014.

Field Office 3(Sheila Kenny); Randy Clark; Ken Hessenius; EPA; Jeff Koops; VIII.B.3, D.1.a & b, D.2.d, D.3.a